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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF T.B. and W.M., minor children,	)	
WILLIE BUCKLEY, natural father,	)	
Appellant-Respondent,	)	No. 45A04-0606-JV-296
vs.	)	
LAKE COUNTY DEPARTMENT OF CHILD SERVICES, and LAKE COUNTY CASA,	)	
Appellees-Petitioners.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Judge
Cause Nos. 45D06-0505-JT-57; 45D06-0505-JT-58

January 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-respondent Willie Buckley appeals from the involuntary termination of his parental rights to his minor children T.B. and W.M. in an action initiated by the Lake County Department of Child Services (DCS), f/k/a/ Lake County Office of Family and Children. Specifically, Buckley argues that (1) the DCS's service by publication prior to the CHINS proceedings violated his procedural due process rights with respect to the termination proceedings and (2) two of the trial court's findings regarding Buckley's status and contact with the children were clearly erroneous. Finding no error, we affirm the judgment of the trial court.

FACTS

On November 25, 2002, the DCS began an investigation regarding the children in Juwanda Mann's East Chicago home after a report that a shooting had occurred in the residence. The investigation revealed that Mann's six children were medically neglected and the children—including Buckley's biological children, eleven-year-old T.B. and nine-year-old W.M.—were removed from the home. Buckley did not live in Mann's home and his whereabouts were unknown at that time.

On December 13, 2002, the children were identified to be children in need of services (CHINS) and the DCS filed the appropriate petitions. In the petitions, Buckley was listed as the father of T.B. and W.M. but his residence was listed as "Unknown." Appellant's App. p. 19. On December 17, 2002, the trial court ordered a service by publication for Buckley "in

the Star Newspaper once each week for three successive weeks" and scheduled an initial hearing for Mann on February 26, 2003, and a service return hearing for Buckley on March 17, 2003. Id. at 27. At the initial hearing, Mann admitted the material allegations of the DCS's petition and the court adopted a case plan calling for the reunification of Mann with her children and ordered parenting classes, drug and alcohol screens and counseling, visitation, and a psychological evaluation. Buckley did not appear at the March 17, 2003, service return hearing, and the trial court found "adequate service of process on Willie Buckley" and granted the DCS's CHINS petition. Id. at 30.

Although Mann initially complied with the services offered in the case plan, she later became uncooperative and the DCS filed petitions for the involuntary termination of Mann and Buckley's parental rights on May 11, 2005. In September 2005, Laconyea Pitts-Thomas, the case manager, received a letter from Buckley indicating that he was the father of T.B. and W.M. Tr. p. 28-29. On November 25, 2005, the trial court received a letter from Buckley stating that he was incarcerated at the Calipatria State Prison in Calipatria, California. The trial court appointed legal counsel to represent him at the fact-finding hearing.

The trial court held a fact-finding hearing on April 6, 2006. While Buckley did not personally appear, his legal counsel was present to represent his interests. The trial court made two findings regarding Buckley: Buckley did not contact his children until September 2005 and had since sent them two letters, and he "is currently serving a sentence in the prison system in California and he has not participated in a plan of care, treatment or rehabilitation." Id. at 11. The trial court concluded that termination "is in the best interest[s] of the

child[ren]" and that "there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child[ren]." Appellant's App. p. 12. In light of these findings, the trial court terminated Buckley and Mann's parental rights with regard to all six children, including T.B. and W.M. Buckley now appeals.

DISCUSSION AND DECISION

I. Standard of Review

In addressing Buckley's claims, we first note that we will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). We neither reweigh the evidence nor judge the credibility of witnesses. Id. We consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn therefrom. Id. If the evidence and the inferences support the trial court's decision, we must affirm. In re L.S., D.S., and A.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

We acknowledge that the involuntary termination of parental rights is the most extreme sanction that a court can impose because termination severs all rights of a parent to his or her children. Id. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Id. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the elements of Indiana Code section 31-35-2-4(b)(2).

> (A) one (1) of the following exists:
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> > (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
> >
> > (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
> >
> > (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
>
> (B) there is a reasonable probability that:
>
> > (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> >
> > (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and
>
> (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 35-2-4(b)(2).

In construing this statute, this court has held that when determining whether certain conditions that led to the removal of the children will be remedied, the trial court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration evidence of changed conditions. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App.

2001). A parent's habitual pattern of conduct must also be evaluated to determine the probability of future negative behavior. Id. The trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship. Id.

Additionally, the trial court may consider the services offered as well as the parent's response to those services. Id. Parental rights may be terminated when parties are unable or unwilling to meet their responsibilities. Ferbert v. Marion County OFC, 743 N.E.2d 766, 776 (Ind. Ct. App. 2001). Also, when determining what is in the best interests of the children, the interests of the parents are subordinate to those of the child. Id. at 773. Thus, parental rights will be terminated when it is no longer in the child's best interests to maintain the relationship. In re B.D.J., 728 N.E.2d 195, 200 (Ind. Ct. App. 2000). The best interests of the child are the ultimate concern in termination proceedings. That is, children should not suffer emotional or psychological harm or instability in order to preserve parental rights. In re L.S., 717 N.E.2d at 210.

II. Procedural Due Process

Buckley argues that the termination proceedings violated his due process rights. While he "will not fault [the DCS] for its initial service by publication" prior to the CHINS proceedings, appellant's br. p. 17, Buckley apparently argues that he was denied procedural due process with respect to the termination proceedings because he did not receive actual notice of the CHINS proceedings because he was incarcerated in California.[1]

[1] Buckley concedes that the "record is not entirely clear exactly when his location was discovered [by the DCS] . . . ." Appellant's Br. p. 12. However, he cites case manager Pitts-Thomas's testimony that she

Buckley directs us to A.P. v. Porter County Office of Family and Children, which held that although CHINS proceedings and termination proceedings are distinct, they are interrelated enough so that procedural irregularities in the CHINS proceedings may deprive a parent of procedural due process with respect to the termination of his parental rights. 734 N.E.2d 1107, 1112 (Ind. Ct. App. 2000) (holding that agency's failure to provide parents with case plans following the CHINS determination violated their procedural due process rights with respect to the subsequent termination proceedings).

Buckley argues that because he never actually received notice of the CHINS proceedings—a fact he contends is proven because he did not contact the DCS until September 2005—he was deprived of procedural due process with respect to the termination proceedings. However, as noted above, Buckley concedes that the DCS was unaware of his location before or during the CHINS proceedings. Appellant's Br. p. 12, 17. Therefore, the DCS properly served Buckley by publication pursuant to Indiana Code section 31-32-9-2 and Indiana Trial Rule 4.13. Hence, Buckley cannot successfully claim that the DCS's service by publication prior to CHINS proceedings violated his procedural due process rights with respect to the termination proceedings because the DCS's service complied with the law. Therefore, unlike the trial court's error in A.P., the DCS's service by publication was not a "procedural irregularity" and Buckley's argument must fail. A.P., 734 N.E.2d at 1112.

III. The Trial Court's Findings

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received a letter from Buckley in September 2005 as the date that the DCS became aware of his location. Tr. p. 28-29.

Buckley argues that two of the trial court's findings regarding his status and contact with the children were clearly erroneous. His attack on these findings is the sole basis for his argument that the trial court erroneously terminated his parental rights.

As noted above, we will neither reweigh the evidence nor judge the credibility of witnesses. A.A.C., 682 N.E.2d at 544. The trial court first found that Buckley did not contact his children until September 2005 and that he has since sent them two letters. Appellant's App. p. 11. Buckley does not challenge the September 2005 date of contact; instead, he argues that he has sent approximately five letters to his son and ten letters to his daughter since that date. However, the evidence presented at trial supports the trial court's finding. Pitts-Thomas testified that Buckley had sent "two letters" since September 2005. Tr. p. 28. Considering our deferential standard of review, we cannot say that the trial court's finding was clearly erroneous in light of the evidence presented at the hearing.

Buckley also argues that the trial court's finding that he "is currently serving a sentence in the prison system in California and he has not participated in a plan of care, treatment or rehabilitation," appellant's app. p. 11, "may be true enough, but it highlights the cavalier approach to [Buckley] exhibited by the [DCS] throughout the proceedings. No effort was ever made to verify any information about [Buckley's] conviction or his expected release date[,]" appellant's br. p. 18. We first note that Buckley concedes that the finding "may be true enough." Appellant's Br. p. 18. Additionally, Buckley fails to note that he did not inform the DCS about the details of his conviction or a potential release date and did not seek advice from the children's case manager as to how to further participate during his

incarceration. Furthermore, the trial court appointed legal counsel to represent Buckley at the fact-finding hearing and his attorney was indeed present at the hearing to represent his interests. Tr. p. 4. Therefore, we cannot say that the findings that Buckley challenges were clearly erroneous.[2]

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.

[2] Buckley titles this section of his brief "Sufficiency of the Evidence" and scantily argues that because these two findings were erroneous they "do not support a finding of termination." Appellant's Br. p. 17-18. Buckley only challenges the two findings discussed above and does not challenge the trial court's findings that termination "is in the best interest[s] of the child[ren]" or that "there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child[ren]." Appellant's App. p. 12. Because we have already concluded that the findings Buckley challenges were not clearly erroneous, we do not need to further address his unembellished argument.